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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 09/784,692 | 02/15/2001 | Zackery Alolabi | 2716TC-045254 | 4535 |
| 38055 | 7590 | 05/11/2004 | EXAMINER | |
| TIM COOK P.O. BOX 10107 LIBERTY, TX 77575 | | | POND, ROBERT M | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3625 | |

DATE MAILED: 05/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/784,692

Applicant(s)

ALOLABI, ZACKERY

Examiner

Robert M. Pond

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ML

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 February 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

The Applicant amended Claims 1 and 5 to overcome rejection under 35 USC 101, and further amended to overcome the prior art cited in the previous Office Action. All pending claims (1-11) were examined in this final Office Action.

Response to Arguments

Applicant's arguments filed 24 February 2004 have been fully considered but they are not persuasive.

Rejection under 35 USC 101

The Applicant argued that the lack of rejection of Claims 2 and 3 is a tacit admission of the statutory nature of the structure of Claim 1. The examiner viewed Claims 2 and 3 as claiming a practical application in the technological arts. As amended, Claims 1 and 5 claim a practical application in the technological arts.

Rejection under 35 USC 103(a)

The Applicant's arguments are based on amendment and acknowledges that the Applicant's invention is an extension of the Robertson patent cited under 35 USC 103(a). Combining Robertson with DM News provides teachings that establish different dates for ordering perishable items for a recipient. This examiner firmly believes it is well within the skill to ascertain that if a company

managing a registry service believed it could sell more flowers by increasing the frequency of deliveries (e.g. from month-to-month to day-to-day) it would be prudent business practice to do so.

Drawings

The Applicant amended the specification to overcome examiner objections but did not respond to objections as noted in the Notice of Draftsperson's Patent Drawing Review (PTO-948).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

- 1. Claims 1-11 are rejected under 35 USC 103(a) as being unpatentable over Robertson (Paper #5, patent number 6,609,106), in view of DM News (Paper #5, PTO-892, Item: U).**

Robertson teaches a system, means, and method for providing an electronic multi-merchant gift registry service over a distributed network. Robertson teaches a registrant making preference selections for a "wish list" remotely being stored in a database, users making database queries, associating with an online flower merchant, and filling orders placed by remote users (see at least abstract; Fig. 1 (40, 50, 60, 70); col. 1, line 10 through col. 3, line 64).

Robertson teaches all the above as noted under the 103(a) rejection and further teaches registrants wishing to delay purchases to some future time or event (see at least col. 2, lines 58-60), but does not specifically disclose fulfilling orders over a period of time or predetermined time period. DM News teaches marthaflowers.com providing a fresh floral delivery service and further teaches a delivery program where flowers can be ordered once or a part of a monthly subscription series with 3-, 6-, and 12-month programs available, akin to Harry

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and David's original fruit-of-the-month club, the standard bearer for mail-order monthly subscription programs for perishables (Item: U, page 1). Therefore it would have been obvious to one of ordinary skill in the art at time of invention to modify the system, means, and method of Robertson to include interval-based delivery of perishable goods as taught by DM News, in order to maximize customer usage and enjoyment at peak product freshness, and thereby attract registrants to the commerce service.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Mr. Robert M. Pond** whose telephone number is 703-605-4253. The examiner can normally be reached Monday-Friday, 8:30AM-5:30PM Eastern.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Mr. Vincent Millin** can be reached on 703-308-1065.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the **Receptionist** whose telephone number is **703-308-1113**.

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks

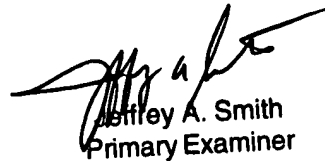
Washington D.C. 20231

or faxed to:

703-872-9306 (Official communications; including After Final
communications labeled "Box AF")

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal
Drive, Arlington, VA, 7th floor receptionist.

Robert M. Pond
Patent Examiner
May 6, 2004


Jeffrey A. Smith
Primary Examiner